

Message Text

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E.O. 11652:NA

TAGS: CASC, PGOV, WB, YO

SUBJECT: LAWSUIT BY LORENZO EDWARD ERVIN, JR.

REF: STATE 79201

FOR BELGRADE FOR KENNETH HILL

1. DEPARTMENT HAS JUST RECEIVED A LETTER FROM IRVING JAFFE, CHIEF OF THE CIVIL DIVISION, DEPARTMENT OF JUSTICE REGARDING ABOVE-MENTIONED CASE. THIS LETTER MAKES THE FOLLOWING POINTS REGARDING ITS REPRESENTATION OF USG EMPLOYEES IN THIS CASE.

2. EACH FEDERAL EMPLOYEE SHOULD BE APPRISED OF THE FACT THAT, BECAUSE ANY JUDGMENT AGAINST HIM IN THIS CASE WOULD BE BASED UPON A FINDING THAT HE ACTED EITHER OUTSIDE THE "OUTER PERIMETER OF HIS "LINE OF DUTY," OR IN BAD FAITH, THE GOVERNMENT WILL NOT INDENMIFY HIM AGAINST ANY MONEY JUDGMENT AWARDED AGAINST HIM INDIVIDUALLY. FOR THIS REASON, EACH DEFENDANT MAY WISH TO CONSIDER RETAINING PRIVATE

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COUNSEL TO DEFEND HIM IN THIS ACTION.

3. HOWEVER, SHOULD ANY DEFENDANT WHO IS A FEDERAL EMPLOYEE WISH TO HAVE THE DEPARTMENT OF JUSTICE REPRESENT HIM IN THIS CASE, IT IS NECESSARY THAT EACH SUCH DEFENDANT MAKE A SPECIFIC REQUEST, THROUGH YOU, FOR US TO DO SO.

4. IF SUCH REPRESENTATION IS DESIRED, PLEASE NOTIFY US IMMEDIATELY, AND TRANSMIT, AS SOON AS POSSIBLE, THE WRITTEN REQUEST OF EACH INDIVIDUAL FEDERAL EMPLOYEE STATING, IF TRUE, THAT ALL CONDUCT RELEVANT TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT WAS WITHIN THE SCOPE OF HIS OFFICIAL DUTIES AND TAKEN IN GOOD FAITH, AND THAT DEPARTMENT OF JUSTICE REPRESENTATION THEREFORE IS REQUESTED IN THIS MATTER.

5. IF SUCH REPRESENTATION IS REQUESTED, WE FURTHER ASK THAT THIS OFFICE BE FURNISHED WITH AN ORIGINAL AND FOUR COPIES OF A PROPERLY EXECUTED AFFIDAVIT FROM EACH OF THE NAMED FEDERAL DEFENDANT S1, WHICH MAY BE UTILIZED TO SUPPORT MOTIONS IN THIS CASE. EACH AFFIDAVIT SHOULD CONTAIN THE FOLLOWING ELEMENTS:

(A) A RECITAL OF THE FACT THAT THE AFFIANT HAS READ AND IS FAMILIAR WITH THE ALLEGATIONS CONTAINED IN THE COMPLAINT.

(B) A DESCRIPTION OF THE POSITION HELD BY THE AFFIANT DURING THE TIME THAT THE EVENTS ALLEGED IN THE COMPLAINT OCCURRED. AN OFFICIAL POSITION DESCRIPTION SHOULD BE ATTACHED TO THE AFFIDAVIT, IF AVAILABLE.

(C) A NARRATIVE DESCRIPTION OF THE PARTICULAR CIRCUMSTANCES WITHIN THE KNOWLEDGE OF THE AFFIANT, WHICH GAVE RISE TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT, OR WHICH DESCRIBE THE AFFIANT'S INVOLVEMENT, IF ANY, IN THE ALLEGED CONTROVERSY.

(D) IF APPROPRIATE, A DENIAL OF ANY ALLEGATIONS CONTAINED IN THE COMPLAINT WHICH THE AFFIANT BELIEVES TO BE FALSE OR MISLEADING.

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(E) IF CORRECT, A STATEMENT TO THE EFFECT THAT THE AFFIANT'S CONDUCT, WHICH IN ANY WAY RELATES TO THE ALLEGATIONS CONTAINED IN THE COMPLAINT, WAS ENTIRELY IN THE COURSE OF HIS OFFICIAL DUTIES AS PREVIOUSLY DESCRIBED IN THE AFFIDAVIT. EACH AFFIDAVIT SHOULD CONCLUDE, IF TRUE, THAT AT ALL TIMES, THE AFFIANT ACTED IN GOOD FAITH AND UPON A REASONABLE BELIEF IN THE VALIDITY OF HIS ACTIONS. SEE, IN THIS REGARD BARR V. MATTEO, 360 U.S. 564 (1959); BIVENS V.

SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS, 456 F.2D 1339 (2ND CIR. 1972); JONES V. PERRIGAN, 459 F.2D 31 (6TH CIR. 1972).

6. AFFIDAVITS SHOULD BE OBTAINED FROM EACH DEFENDANT'S SUPERIORS CORROBORATING THAT EMPLOYEE'S AFFIDAVIT AND AFFIRMING THE STATEMENTS THAT ALL ACTIONS TAKEN BY THE

EMPLOYEE WERE WITHIN THE SCOPE OF THE EMPLOYEE'S AUTHORITY AND UNDER COLOR OF OFFICE.

7. THESE POINTS SHOULD BE UNDERSTOOD, AND THE APPROPRIATE STATEMENTS INCLUDED IN THE REQUEST FOR REPRESENTATION. KISSINGER UNQTE KISSINGER

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